SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

Supreme Court, U.S.
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October Term, 1946

No. 1 Original.

59

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

Petition for Allotment of Time for Oral Argument.

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IN THE

Supreme Court of the United States

October Term, 1946

No. 12 Original.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

Petition for Allotment of Time for Oral Argument.

The State of California respectfully petitions the Court for an allotment of four hours time for oral argument in the above entitled cause, basing its petition upon the following grounds:

1. This is an original proceeding in which the Federal Government is asserting title in fee simple to, or paramount rights in, approximately 3,000 square miles of territory wholly within the boundaries of California, including filled lands formerly below low-water mark which have been improved with structures of enormous value, and including large areas of submerged lands which have been granted by the State to its municipalities, and other areas which are the subject of leases, franchises and permits to hundreds of its citizens for a

variety of purposes. This case is represented by the Attorney General of the United States as being a "test" case which will "settle" the same issues for all other coastal States of the Union.

2. The Brief filed herein by plaintiff presents not only arguments upon the pleadings but is, in effect, a presentation to this Court of the entire case upon facts judicially known to the Court. The hearing now set before this Court on March 12, 1947, is, therefore, a trial of the cause on all issues, both of fact and law.

3. The issues of law and fact are numerous and complex and involve the basic relationships between States and Federal Government under the American Constitutional system. The defenses of the State of California cannot be presented adequately in the time usually allotted for oral argument in private litigation. Among the questions presented by plaintiff's Brief upon which defendant desires to present argument are the following:

(a) The question whether this Court has jurisdiction of the case as presented in plaintiff's complaint and brief; whether any justiciable issues are presented; and whether there is a case or controversy under Article III, Section 2 of the Constitution.

(b) Whether the Attorney General has authority to institute this action.

(c) The question as to what rights and powers in the lands below low-water mark and outside so-called "inland waters" were acquired by the original States in 1776, as successors of the Crown of England.

(d) The previous question brings in issue the legal rights of the Crown of England to lands below low-water mark and outside so-called "inland waters" under the common law of England prior to 1776.

(e) The question as to whether the so-called three-mile rule as developed in international law could in any way limit the rights of the Crown as against its subjects or the rights of the Crown's successors, the original States, as between themselves and the Federal Government.

(f) The question whether the vesting of powers of external sovereignty in the Federal Government by the constitutional grants, or from any other source, involved any cession to or acquisition by the Federal Government of lands below low-water mark and outside so-called "inland waters" within the territory of the original States.

(g) The extent of the territory and jurisdiction of the original States in 1789.

(h) The question whether the early acts of the Federal Government in recognizing the three-mile limit as against other nations constituted an annexation of territory to the United States.

(i) The question whether proprietary title to or interest in lands within the territory of a State could vest in the national sovereign by reason of its position in international affairs.

(j) The question whether ownership of lands beneath navigable waters within a State is a necessary incident of State sovereignty or is an incident of sovereignty at all.

(k) The question whether all lands beneath navigable waters passed to the new States upon their admission to the Union under the rule of equality of States or only lands beneath so-called "inland waters" and between high- and low-water mark.

(l) The question as to what constitutes the public lands or public domain of the United States and as to whether lands beneath navigable waters within a State constitute public lands of the United States.

(m) The question of the interpretation and meaning of the Act of Congress admitting California to the Union, particularly as to whether the Federal Government reserved to itself the lands beneath navigable waters.

(n) The question whether, if ownership of lands beneath navigable waters is not an incident of sovereignty at all, either Mexico or the United States ever acquired any title thereto; and whether, if such be the law, California is not the owner by reason of being the first appropriator and of having possessed and occupied such lands since the adoption of its Constitution in 1894.

(o) The question whether the doctrines of prescription, long usage and acquiescence do not apply as between sovereigns; and whether California (if it did not already have good title) has not acquired perfect title to all lands beneath navigable waters within its boundaries by reason of prescription and

also through the long acquiescence of plaintiff in the exercise by California of dominion and sovereignty over such lands.

For the reasons above stated, defendant State of California prays the Court to allow it four hours for the presentation of its defense.

Respectfully submitted,

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February, 1947.